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OFFICE OF SECRETARY

September 13, 1994

94-106

**VIA HAND DELIVERY**

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Oral Ex Parte Presentation in PR File No. 94-SP4

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2)(1993), this is to provide an original and one copy of a notice of an ex parte presentation made in the above-referenced rulemaking proceeding on behalf of Springwich Cellular Limited Partnership ("SCLP" or "Company").

On September 13, 1994, Peter P. Bassermann, President of SNET Springwich, Inc., Jean L. Kiddoo and Shelley L. Spencer of Swidler & Berlin, Chtd., met with Regina Harrison, Doron Fertig and Julia F. Kogan of the Private Radio Bureau to discuss the Petition of the Connecticut Department of Public Utility Control ("DPUC") filed in the above-referenced proceeding. At the meeting, the participants discussed the Company's position on the issues raised in the DPUC Petition. A copy of the post-hearing briefs filed by SCLP before the DPUC in Docket No. 94-03-27, which summarize the Company's position as discussed at the meeting, together with a compendium of the DPUC decisions cited therein, were provided at the meeting. In addition, a copy of the Protective Order issued by the DPUC in Docket No. 94-03-27 was provided. Copies of these materials are attached hereto. In addition, a typewritten facsimile of a handwritten diagram of the SCLP corporate structure prepared at the meeting is attached hereto for the Commission's file.

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Should any further information be required with respect to this ex parte notice, please contact the undersigned.

Respectfully submitted,

Jean L. Kiddoo
Shelley L. Spencer

Attachment

cc: Regina Harrison, Esq.
Doron Fertig, Ph.D.
Julia Kogan, Esq.

**DPUC Docket No. 94-03-27** - DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition

1. Initial Brief of Springwich Cellular Limited Partnership

2. Reply Brief of Springwich Cellular Limited Partnership

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

PUBLIC VERSION

BEFORE THE
STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

| | | |
|---|---|---|
| DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition | ) | Docket No. 94-03-27 |

# INITIAL BRIEF OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP


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Dated: June 29, 1994

## TABLE OF CONTENTS

**PUBLIC VERSION**

**BEFORE THE**
**STATE OF CONNECTICUT**
**DEPARTMENT OF PUBLIC UTILITY CONTROL**

| | | |
|---|---|---|
| **DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition** | ) | **Docket No. 94-03-27** |

**INITIAL BRIEF OF**
**SPRINGWICH CELLULAR LIMITED PARTNERSHIP**

Springwich Cellular Limited Partnership ("Springwich"), by its undersigned counsel, hereby submits its initial brief in this proceeding, which was initiated by the Department to determine whether to petition the Federal Communications Commission ("FCC") for authority to continue to regulate the intrastate rates of the wholesale cellular carriers in the State of Connecticut. For the reasons set forth herein, Springwich submits that the cellular market in Connecticut is a robustly competitive one, and that the criteria set forth by the FCC which would justify continued state rate regulation of cellular carriers, particularly in the face of new entry by unregulated Commercial Mobile Radio Service ("CMRS") competitors, cannot be met. Accordingly, Springwich urges that the Department refrain from petitioning the FCC and to deregulate the cellular wholesale carriers.

In this Brief, Springwich will demonstrate that the record in this proceeding does not contain the compelling evidence required by the FCC to grant a petition filed by the Department. First, the record in this proceeding demonstrates that today, even without the imminent entry of new CMRS providers, the wholesale cellular carriers actively compete with each other. This vigorous competition has resulted in declining wholesale prices and continued network investment by the carriers. Second, the record does not contain any persuasive evidence that has not already been considered by the FCC in its decision to forbear from rate regulation of cellular carriers or rejected by the Department in its own regulation of the cellular carriers. Third, the targeted regulation of wholesale cellular carriers in Connecticut that would result from continued rate regulation will thwart the Congressional mandate for regulatory parity in the treatment of mobile services. Fourth, the resellers' predictions that the wholesale carriers are earning supra-competitive profits have been clearly refuted by the actual financial performance of the carriers, further demonstrating that market conditions in Connecticut adequately protect subscribers from unjust and unreasonable rates and rates that are unjustly or unreasonably discriminatory.

## I. BACKGROUND

The FCC determined in 1981, after carefully balancing the spectrum requirements for cellular systems, the overall scarcity of available spectrum, and the public interest in a competitive cellular market, to license two competing cellular systems to serve each community.[1/] It further determined to allocate one of the licenses to the existing wireline carrier in each market, and the other to a non-wireline entrant, and adopted a number of rules to assure competition between the two carriers.[2/] Springwich is the wholesale cellular carrier owning, operating and providing cellular mobile telephone service to resellers on the wireline "Band B" frequencies in Connecticut. Springwich's Connecticut cellular service territory is comprised of a population of roughly 3.2 million. Tr. at 1601.[3/]

The non-wireline "Band A" Connecticut frequencies were initially awarded by the FCC to Metro Mobile CTS of Fairfield County, Inc., Metro Mobile CTS of Hartford, Inc., Metro Mobile

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1/ *Cellular Communications Systems*, 86 F.C.C.2d 469, 482 (1981) *aff'd on recon.* 89 F.C.C.2d 58 (1982).

2/ *Id.* at 491.

3/ References to the transcript of hearings held in this proceeding will be cited herein by reference to the transcript page, *e.g.*, "Tr. at __." Late-filed exhibits admitted at the hearings will be cited by reference to the number assigned at the hearing, *e.g.*, "LF #1". Responses to data requests, including pre-filed testimony, will be cited by the name of the responding party and the data request number to which they responded, *e.g.*, "Springwich TE-11."

CTS of New Haven, Inc., Metro Mobile CTS of New London, Inc., and Metro Mobile CTS of Windham, Inc. (the "Metro Mobile Companies"). In addition to serving Connecticut, the Metro Mobile Companies held a number of non-wireline cellular licenses nationwide. Tr. at 1606-07. In 1992, Metro Mobile was acquired by Bell Atlantic Enterprises International, Inc. (the post-acquisition companies are referred to collectively as "Metro Mobile/BAM"). Metro Mobile/BAM is a part of the Bell Atlantic corporate family. Bell Atlantic and its subsidiaries serve as the wireline cellular carrier in the six Bell Atlantic states and the District of Columbia, and as the non-wireline cellular carrier in a number of other markets including Connecticut, with a total cellular service area population of over 36 million throughout the United States. Tr. at 1601. Litchfield County Cellular is the Band B carrier licensed to provide cellular services in the Connecticut Rural Service Area No. 1. McCaw Cellular Communications, Inc., whose merger with AT&T is currently pending government approval, is in the process of acquiring Litchfield County Cellular.

The FCC's initial effort to accommodate the public interest in a competitive cellular market through a two system per market license scheme and related policies has proven successful. Over the years, cellular subscribership in Connecticut has increased dramatically. Springwich's market share of subscribers, however, has declined from 100 percent (when it entered the market ahead

of the non-wireline applicant) to 46 percent as a result of the competitive efforts of the Metro Mobile Companies and later Metro Mobile/BAM. Tr. at 64. Moreover, wholesale competition has had a significant impact on the rates and other promotional, marketing and financial support provided by the wholesale carriers to resellers in the Connecticut market. During this time, the Department has regulated the rates of the wholesale carriers by permitting them to tariff a band of rates, and to modify their prices within that band on 30-days notice. In all of the time that this regulatory regime has been in place, neither of the carriers have sought to increase their rates, and those rates are well below the maximum permitted by the tariffs.

In 1993, recognizing the market growth and competitive nature of the mobile market across service lines by cellular and other mobile service providers, and seeking to spur the prompt entry of a wide variety of new mobile technologies and services, the Congress enacted certain new statutes to govern all of the competitive commercial mobile radio services ("CMRS"), including cellular services, as part of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").[4/] To assure regulatory parity

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[4/] Pub. L. No. 103-66, Title VI, 107 Stat. 312, 392 (1993). Commercial mobile radio services are defined in the Budget Act as mobile services provided for profit that make interconnected service available to the public or a substantial portion thereof. Private mobile radio services are services that do not meet the definition of commercial mobile radio services. Budget Act, § 6002(d)(1)(3).

among existing and newly authorized services, the Congress provided a national regulatory framework for CMRS providers and, among other things, preempted state rate regulation of such services absent a substantial showing that rate regulation is required. Pursuant to the Budget Act's directive, the FCC has formulated procedures and standards under which it will review requests by state regulatory commissions to continue existing rate regulation of CMRS providers. The Department, one of only 19 states which currently regulate cellular rates, initiated this proceeding pursuant to Section 6002(c)(3) of the Budget Act to determine whether to petition the FCC for continued authority to regulate the intrastate rates of wholesale cellular carriers in Connecticut. (Thirty-one states had determined prior to the Budget Act not to regulate cellular services.) In addition, of the 19 states that could petition the FCC, only two states have decided to file petitions.[5/]

The FCC will require a state to clear "substantial hurdles" if it seeks to continue rate regulation of CMRS providers.[6/] Petitions will be strictly scrutinized by the FCC and measured against the FCC's own decision not to regulate the rates of

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[5/] *See* LF #11.

[6/] *See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd. 1411 (1994), *petitions for reconsideration pending, ("Second Report and Order")* at ¶ 23.

cellular carriers and by Congress' mandate for the creation of parity in the regulation of mobile services.[7/] Like the public service commissions in Nevada, North Carolina, Virginia and West Virginia, which have already reached a decision not to petition the FCC, the Department also should determine not to petition the FCC for continued authority to regulate the intrastate rates of wholesale cellular providers.[8/]

The record in this proceeding lacks the persuasive evidence required by the FCC to grant the Department's petition for continued rate regulation authority. The evidence presented here clearly demonstrates that market conditions in Connecticut have protected wholesale cellular subscribers and their customers from unjust and unreasonable rates and from rates that are unjustly or unreasonably discriminatory. The evidence further shows that such protection will continue absent rate regulation by the Department.

The reseller parties[9/] have not presented any evidence to

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7/ *Second Report and Order* at ¶ 2 (FCC preemption rules will "help promote investment in the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our federal mandate for regulatory parity.")

8/ *See* LF #6. On May 31, 1994, the Nevada Public Service Commission voted not to petition the FCC for continued authority to regulate the rates of cellular providers, which information was not available in time for inclusion in LF #6.

9/ The term "resellers" is used herein collectively to refer to The Cellular Resellers Coalition, Escotel Cellular, Inc., The (continued...)

the contrary which would warrant continued rate regulation of wholesale cellular services, particularly when judged by the strict standard established by Congress and the FCC. In fact, the reverse is true. The evidence presented by the resellers in this proceeding of alleged discriminatory practices by the wholesale carriers (for example, the bundling of cellular equipment and retail cellular services) has in many instances actually been determined by the FCC to be in the public interest.[10/] In addition, the resellers' arguments parallel the arguments already rejected by the Department in its 1991 decision regarding regulation of wholesale cellular service providers.[11/] The arguments that were unpersuasive to the Department in 1991, should not be persuasive to the Department today, and will not be persuasive to the FCC tomorrow.

Finally, although the Department determined in 1991 that forbearance from rate regulation of wholesale cellular providers

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[9/](...continued)
Phone Extension, Inc, Esco PCN Telecommunications, Inc., and Message Center U.S.A. The resellers have advocated continued and, indeed, increased regulation of cellular wholesale providers.

[10/] *See In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service*, Report and Order, 7 F.C.C. Rcd. 4028, 4032 (1992).

[11/] *See Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Re: Forbearance From Regulation of Rates of Cellular Telephone Mobile Telephone Service*, Docket No. 90-08-03, Decision (Sept. 25, 1991) ("Forbearance Decision") at 6.

would not enhance or expedite the competitive evolution of the cellular market in Connecticut, the FCC has determined that forbearance from rate regulation of cellular providers, including forbearance from tariff filing requirements, fosters competition and will not subject subscribers to unjust and unreasonable rates or rates that are unjustly and unreasonably discriminatory.[12/] The FCC's decision was made with the explicit recognition that there are, by definition, only two licensed wholesale cellular carriers in any given service area.[13/]

## II. REGULATORY PARITY AND SYMMETRY ARE PARAMOUNT GOALS OF THE BUDGET ACT'S COMMERCIAL MOBILE RADIO SERVICES PROVISIONS

### A. The Budget Act Creates A General Presumption Of Preemption Of State Entry and Rate Regulation of Commercial Mobile Services

#### 1. Congress Intended To Preempt State Rate and Entry Regulation Of Cellular Services

Consistent with its intent to create regulatory parity in mobile services and to enhance vigorous competition, Congress generally preempted all state entry and rate regulation of commercial mobile services, including cellular services. This federal mandate preempts state law and is grounded in Supremacy

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12/ *Second Report and Order* at ¶ 177. The FCC also precluded cellular carriers from voluntarily filing tariffs finding that the acceptance of tariff filings was not in the public interest and that such filings could inhibit competition. *Id.* at ¶ 178.

13/ *Id.* at ¶¶ 146-154.

Clause of the United States Constitution, Article VI. *State v. Murtha*, 179 Conn. 463, 469 (1980). Recently, the Connecticut Supreme Court stated in *Times Mirror Co. v. Department*, 192 Conn. 506, 510-11 (1984):

> The question of preemption is one of federal law, arising under the supremacy clause of the United States Constitution. *U.S. Const., Art. VI* As the United States Supreme Court has recently reiterated, "state law can be preempted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted. [*Pacific Gas & Electric Co. v. State Energy Resource Conservation & Development Commission*, 461 U.S. 190, 203, 103 S. Ct. 1713, 75 L. Ed. 2d 752 (1983)]; *Fidelity Federal Savings & Loan Ass'n v. de las Cuestra*, 458 U.S. 141, 153, [102 S. Ct. 3014, 73 L. Ed. 2d 664](1982); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 [67 S. Ct. 1146, 91 L. Ed. 1447](1947). If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 [83 S. Ct. 1210, 10 L. Ed. 2d 248, reh. denied, 374 U.S. 858, 83 S. Ct. 1861, 10 L. Ed. 2d 1082](1963), or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52, 67 [61 S. Ct. 399, 85 L. Ed. 581](1941)." *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238, 248, 104 S. Ct. 615, 78 L. Ed. 2d 443 (1984).

In situations where Congress has acted and expressly prohibited certain state action, including regulation, preemption occurs. As the Connecticut Supreme Court has said:

> There is no doubt that when federal law manifests a federal judgment that the absence of regulation will best service federal objectives, state regulation is preempted. *Mobil Oil Corporation v. Dubno*, 492 F. Supp. 1004, 1010-11 (D. Conn. 1980), *appeal dismissed*

*in part and aff'd in part*, 639 F. 2d 919 (2d Cir. 1981). (*Id.* at 517.)

Here, Congress could not speak any more clearly. Congress stated that "no state . . . government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . ."[14/] By the passage of the Budget Act, the Federal government has announced and enacted federal policy which removes ratemaking and market entry authority from the states, subject only to the grant of a petition by the FCC, which petition will be subject to strict scrutiny and a very high burden of proof.

It is undisputed by the resellers who participated in this proceeding (and who advocate not only continued but increased regulation) that cellular services are within the category of commercial mobile radio services that Congress intended to preempt. Even reseller witness Gusky, who opposed the Budget Act preemption provisions in Congress and, having failed to prevail in Washington, continues to oppose Congress' action on a state-by-state basis, acknowledged that Congress intended to preempt state entry and rate regulation of cellular services. *See* Tr. at 357-58. Despite Mr. Gusky's view that there cannot by definition ever be a competitive environment where there are only two licensed carriers, Tr. at 358, Congress acted to preempt state

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[14/] Budget Act, § 6002(c)(3).

regulation with the clear knowledge that in every market in the United States there are and will only be two licensed facilities-based cellular carriers.

The only exception provided by Congress to the general preemption of state entry and rate regulation of mobile services is the petition process created for those few states that regulated the rates of a commercial mobile service as of June 1, 1993. Of the small minority of states that currently regulate cellular services, the states of Nevada, North Carolina, Virginia and West Virginia have already heeded Congress' call and decided not to petition the FCC for continued rate regulation. *See* LF #6; n. 8, *supra*. In addition, of the remaining 15 states that regulate cellular services and could petition the FCC, only two states have decided to file petitions.

In order to sustain a petition, a state must demonstrate to the FCC that:

> (1) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
>
> (2) such market conditions exist and such service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within such State.[15/]

Since there has been no contention in this proceeding that wholesale cellular services are a replacement for landline

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15/ Budget Act, § 6002(c)(3).

telephone exchange service for a substantial portion of the telephone landline exchange service, the Department's decision whether to petition the FCC must be guided solely by whether the evidence presented in this proceeding will enable the Department to sustain its burden of proof as to the first standard. Furthermore, the correct test to be used by the Department, as the FCC has clarified in its own decision to forebear from cellular rate regulation, is the adequacy of market conditions to protect against unjust, unreasonable and discriminatory rates, not whether the market is fully competitive.[16/]

### 2. The Budget Act Forecloses Expansion of the Department's Authority Over Mobile Services

The Federal government grandfathered the statutory ratemaking authority for wholesale cellular service as it existed at the Department as of June 1, 1993. Thus, as to cellular service and all other CMRS services such as SMRS, PCS and paging services, the Connecticut law and the Department's regulatory jurisdiction is not subject to enlargement or addition.

Accordingly, Connecticut statutory provisions, including those contained in Connecticut Public Act 94-83, an *Act Implementing the Recommendations of the Telecommunications Task Force* ("P.A. 94-83"), cannot be enforced because the public law became effective after June 1, 1993. (*See* C.G.S. § 16-250b(a).)

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16/ *Second Report and Order* at ¶¶ 135-138.

Enhanced Specialized Mobile Radio Services ("ESMR"), that will soon be offered in Connecticut by companies such as Nextel, Inc. and that will compete directly with cellular services therefore will not be subject to rate regulation by the Department. PCS services, including the cellular-like service offerings of broadband PCS providers, will similarly be beyond the jurisdiction of the Department. This jurisdictional limitation *cannot* be reinstated through a petition by the Department to the FCC or by any other means.

### 3. The Budget Act Preempts Significant Portions of P.A. 94-83 With Respect to Mobile Services

P.A. 94-83 becomes effective July 1, 1994.[17/] The Public Act was intended to meet broad new goals for telecommunications in Connecticut and to "reduce regulatory barriers to competition in telecommunications services".[18/]

Many existing sections of the Connecticut General Statutes were repealed, modified or otherwise changed by P.A. 94-83. C.G.S. § 16-250b, however, which grants the Department jurisdiction over cellular carriers licensed by the FCC, was unaffected. C.G.S. § 16-247c, on the other hand, which prohibits anyone from providing telecommunications service in Connecticut without having first obtained a certificate from the Department,

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17/ *See* P.A. 94-83, § 16.

18/ *See* Legislative Analysis Summary.

except for, in relevant part, "cellular mobile telephone, radio paging and mobile radio services," was modified by P.A. 94-83. Section 4 of P.A. 94-83 repealed that language and substituted "commercial mobile radio telecommunications services to the extent regulated by the federal government" as the class of carriers excluded from the certification requirement.[19/]

To the extent that P.A. 94-83 could be interpreted as an effort to enlarge the Department's authority to rate regulate non-cellular CMRS carriers that are not regulated by the federal government, such as PCS providers and Nextel, such enlargement is void and unenforceable because the Budget Act preempted all rate and entry regulation of CMRS providers not regulated by the states as of June 1, 1993. Thus, P.A. 94-83 does not vest the Department with authority to enlarge its ratemaking jurisdiction over the intrastate service offerings of Nextel, PCS carriers, cellular companies, CMRS resellers, or any other mobile radio service provider for that matter.

Any effort in P.A. 94-83 to add or enlarge the Department's regulatory authority to regulate such matters as the bundling of tariffed services (§ 3(a)), the authorization of a promotional offering on five (5) days notice (§ 6(e)), and the classification of cellular service as a competitive or emerging competitive tariffed service (§ 6), is also preempted by the Budget Act.

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19/ P.A. 94-83 § 4(a).

Application of these broader grants of rate authority cannot be applied to wholesale cellular services because they post-date the June 1, 1993 deadline set by Congress in the Budget Act to grandfather existing rate regulation. The Budget Act further renders these sections of P.A. 94-83 inapplicable to the wholesale cellular carriers.[20/]

In conclusion, the Department has *no* ratemaking or market entry authority over CMRS carriers other than wholesale cellular carriers. As cellular and other mobile carriers are and will be in direct competition with each other, the Department should find, as Congress and the FCC have already concluded, that such an unequal regulatory framework will impede competition and is not in the public interest.

### B. Continued Rate Regulation of Wholesale Cellular Providers in Connecticut is Inconsistent with The Budget Act

Continued rate regulation of wholesale cellular services in Connecticut will impede the Congressional effort to achieve nationwide regulatory parity in mobile services to the detriment of mobile service subscribers in Connecticut. This disparity is particularly acute given the limited statutory jurisdiction of

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20/ Springwich expresses no view as to the applicability of the remaining sections of P.A. 94-83 other than to concur that the provisions establishing a universal service fund will apply to the mobile industry (*see* P.A. 94-83 § 5).

the Department over existing and future mobile services.[21/] Indeed, wholesale cellular services are the only intrastate mobile services currently regulated by the Department and, as shown below, are therefore the only services which could therefore continue to be regulated pursuant to the Budget Act. Intrastate paging services are not regulated.[22/] Specialized mobile radio services ("SMRS") are not regulated by the Department.[23/] And the newly emerging personal communications services ("PCS") will not (indeed cannot) be regulated by the Department.[24/]

Accordingly, should the Department determine to petition the FCC for authority to continue rate regulation of the cellular wholesale carriers, it would be seeking to impose targeted regulation of a single, isolated segment of CMRS providers. Such asymmetrical regulation would frustrate the Congressional goal of regulatory parity among existing and new market entrants.[25/]

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21/ C.G.S. § 16-250b; C.G.S. § 16-247c.

22/ C.G.S. § 16-247c.

23/ *Id.*

24/ *Id.*

25/ Budget Act, § 6002(d)(1); *see also* H.R. Report 2264, 103rd Cong., 1st Session (1993) at 496 ("*Conference Report*"); *Second Report and Order* at ¶¶ 2, 13 (By establishing a new class of commercial mobile radio services, Congress has taken a comprehensive and definitive action to achieve regulatory symmetry in the classification of mobile services.)

Indeed, as indicated in the Conference Report accompanying the Budget Act, such disparate regulation undermines the fundamental purpose of the Act:

> It is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that consistent with the public interest, *similar services are accorded similar regulatory treatment*.[26/]

The FCC has faithfully adhered to Congress' mandate for regulatory symmetry:

> We believe that Congress, by adopting Section 332(c)(3)(A) of the Act, intended generally to preempt state and local rate and entry regulation of all commercial mobile radio services *to ensure that similar services are accorded similar regulatory treatment* and to avoid undue regulatory burdens, consistent with the public interest.[27/]

### C. The FCC Will Strictly Scrutinize All State Petitions for Continued Rate Regulation Authority

The Department will bear the burden of proof to sustain any petition filed for continued rate regulation at the FCC. The FCC has cautioned states that evidence supporting their petitions must be sufficiently persuasive to clear the "substantial

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[26/] *Conference Report* at 494 (emphasis added).

[27/] *Second Report and Order* at ¶ 250 (emphasis added); *see also In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Further Notice of Proposed Rulemaking*, GN Docket No. 93-253, FCC 94-100 (rel. May 20, 1994), at ¶ 6 (noting Congress regarded achieving "comparable" regulation as essential to establishing regulatory symmetry and promoting fair competition among mobile service providers).